



BEFORE THE STATE BOARD OF EQUALIZATION
'OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
ALBERT I. AND RUTH KAUFMAN)

Appearances:

For Appellants: Albert I. Kaufman,
in pro. per.

For Respondent: Carl G. Knopke
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Albert I. and Ruth Kaufman against a proposed assessment of additional personal income tax in the amount of \$396.30 for the year 1977.

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The issue in this matter is whether appellants are entitled to their claimed solar energy tax credit.

Appellants claimed a solar energy tax credit in the amount of \$396.00 on their 1977 return. Appellants described their energy and conservation measures as having to do with room insulation. Respondent disallowed the claim on the basis that energy conservation measures in and of themselves did not qualify for the solar energy credit in that year. Rather, such measures were required to be installed in conjunction with a solar energy system in order to qualify for the credit. (Rev. & Tax. Code, § 17052.5, subd. (a)(5). ^{1/}) Respondent issued a notice of proposed assessment accordingly.

Appellants protested, stating for the first time that the room insulation "was installed in connection with a 'passive thermal system' . . ." Respondent requested further information, and appellants provided a copy of a construction contract. However, this document did not indicate the installation of a passive thermal solar energy system. **Consequently**, respondent affirmed the proposed assessment and appellants appealed.

It is well settled that respondent's determination of the proper tax is presumed correct, and that the burden is on the taxpayer to prove the determination is in error. (Todd v. McColgan, 89 Cal.App.2d 509 [201 P.2d 414] (1949); Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969.) **Unsupported** assertions or unconvincing evidence are insufficient to sustain this burden. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Mike and Norma Hirsch, Cal. St. Bd. of Equal., April 24, 1967.)

The provisions authorizing the allowance of a solar energy device credit **are contained** in section 17052.5 of the Revenue and Taxation Code. The credit is computed, on a percentage basis, on the cost of the solar energy system. (Rev. & Tax. Code, § 17052.5, subd. (a)(2).) Certain energy conservation measures applied in conjunction with solar energy systems can also be eligible for the credit as they may be considered part of the systems. (Rev. & Tax. Code, § 17052.5, subd. (a)(5).) Ceiling, wall and floor

^{1/} All references to section 17052.5 and its subdivisions pertain to provisions in effect for 1977.

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insulation fall within the class of conservation measures that can qualify for the credit when installed in conjunction with a solar energy system. (Rev. & Tax. Code, § 17052.5, **subd. (a)(S).**)

The Energy Resources Conservation and Development Commission establishes the standards for determining which solar energy systems (and accompanying conservation measures) are eligible for the solar energy device credit. (Rev. & Tax., Code, § 17052.5, subds. **(a)(5)** and **(i).**)

In addition to the above-mentioned construction contract, appellants provided a description of the system on which they have based their claim for a solar energy device credit. However, it was not readily apparent from that description whether the system met the guidelines and criteria for the credit. The matter was therefore referred to the Energy Resources Conservation and Development Commission for their evaluation. The conclusion reached by that agency was that the submitted description failed to provide enough information for a determination. Appellants were informed of the above and were requested to respond. However, they have not done so.

Based on the foregoing, it is our conclusion that appellants have not substantiated their eligibility for the claimed credit. Under these circumstances, the disallowance of their claim is proper, and respondent's proposed assessment to that effect must be upheld.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section '18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Albert I. and Ruth Kaufman **against** a proposed assessment of additional personal income tax in the amount of **\$396.30** for the year 1977, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of February , 1982, by the State Board of Equalization, with Board Members Mr. Bennett, Mr. Reilly, Mr. Dronenburg, and Mr. Nevins present.

William M. Bennett _____, Chairman

George R. Reilly _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Richard Nevins _____, Member

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